

### REMARKS

Claims 1-76 are pending in action, with claims, 1, 19, 37, and 55 being independent. Claims 1, 4, 10-11, 14-15, 18-19, 28-29, 31-33, 36-37, 46-47, 49-51, 54-55, 58, 64-65, 68-69, and 72 are being amended. No new matter has been added. Support for the amendments to claims 1, 4, 10-11, 19, 28-29, 37, 46-47, 55, 58, and 64-65 can be found in the specification, for example, on page 4, paragraph 22; page 6, paragraph 24; and pages 10-11, paragraphs 34-40. Support for the amendments to claims 14-15, 32-33, 50-51, and 68-69 can be found in the specification, for example, on page 3, paragraphs 6-7. Support for the amendments to claims 18, 36, 54, and 72 can be found in the specification, for example, on page 4, paragraphs 8-9.

Applicants acknowledge that the citations included in the supplemental information disclosure statement have been considered by the Examiner.

Applicants acknowledge that the drawings filed on November 1, 2007 are accepted by the Examiner.

Claims 1-9, 12-27, 30-45, 48-63, and 66-76 stand rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,483,676 ("Mahany") in view of U.S. Patent No. 7,075,913 ("Yavuz").

Applicants acknowledge that claims 10-11, 28-29, 46-47, and 64-65 would be allowable if rewritten to include all of the limitations of the base claim and any intervening claims.

Reexamination of the application and reconsideration of the action are respectfully requested in light of the foregoing amendments and the following remarks.

### **Allowable Subject Matter**

Applicants acknowledge that claims 10-11, 28-29, 46-47, and 64-65 would be allowable if rewritten to include all of the limitations of the base claim and any intervening claims.

Applicants reserve the right to rewrite claims 10-11, 28-29, 46-47, and 64-65 to include all of the limitations of the base claim and any intervening claims to be in allowable form.

### **Section 103 Rejections**

Claims 1-9, 12-27, 30-45, 48-63, and 66-76 stand rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,483,676 ("Mahany") in view of U.S. Patent No. 7,075,913 ("Yavuz"). Applicants respectfully traverse the rejection.

#### **Claim 1 and its dependent claims**

Applicants previously argued that claim 1 does not require a separate test transmission at a second data rate, i.e., to evaluate and select the second data rate. The Examiner responded, stating that "the features upon which applicant relies ... are not recited in the rejected claims."

As a clarification, Applicants have amended claim 1 to recite determining a received signal quality value from received packets transmitted at a first data rate; determining a packet loss indicator value from transmitted packets transmitted at a second data rate; and selecting a third different data rate in response to the received signal quality value and the packet loss indicator value. As amended, claim 1 recites features not taught by Mahany or Yavuz.

Applicants resubmit that Mahany discloses using a test transmission at a second data rate and a response to the test transmission to switch over to the second data rate if appropriate (col. 30, lines 45-54). Mahany does not disclose selecting a third different data rate in response to a received signal quality value and the packet loss indicator value.

For at least this reason, Applicants submit that claim 1 is allowable as amended.

In addition, as previously argued in Applicants' response filed on November 1, 2007, Yavuz does not cure the deficiencies of Mahany. See, pages 18-19 of Reply to Action filed on November 1, 2007.

For at least this additional reason, Applicants submit that claim 1 is allowable as amended.

Claims 2-18 and 73 depend from claim 1 and also are submitted to be allowable for at least the same reasons set forth above with respect to claim 1.

Claim 5 is separately allowable for at least the following additional reasons.

The Examiner previously acknowledged that Mahany does not disclose "generating a confidence value and adjustment value for each of a plurality available data rates using the received signal quality value and the packet loss indicator value." See, page 8 of Office Action

mailed on July 3, 2007. Notwithstanding the acknowledgement, the Examiner now argues that Mahany discloses "a confidence value for each of a plurality available data rates using the received signal quality value and the packet loss indicator."

In particular, the Examiner states that "Mahany et al. in col. 16 lines 4-9 recite the selection of data rate being based upon average value of signal strength, and col. 17 lines 5-13 recite selection of data rate being based on error percentage above a threshold level clearly reads on the confidence value for the data rates as claimed."

Applicants respectfully disagree. Mahany discloses that "the controller may then determine the presence and signal strength of the carrier, and make a decision as to whether it is desirable to revert to the lower data rate." Col. 15, lines 57-60. As an initial matter, Mahany does not generate a confidence value. Mahany determines a signal strength and selects a data rate.

For at least this reason, Applicants submit that claim 5 is allowable.

In addition, Mahany does not generate a confidence value for each of a plurality of available data rates. Mahany determines a signal strength of a single carrier of a lower data rate.

For at least this additional reason, Applicants submit that claim 5 is allowable.

In addition, as previously argued in Applicants' response filed on November 1, 2007, Yavuz does not cure the deficiencies of Mahany. See, pages 19-20 of Reply to Action filed on November 1, 2007.

Claim 6 is separately allowable for at least the following additional reasons.

The Examiner states that Mahany discloses "generating an adjustment value for the received signal quality value from the packet loss indicator and the use of a table".

The portion of Mahany relied upon by the Examiner discloses a "level adjust circuit which may comprise a simple resistive attenuator for scaling the signal to provide the proper FM deviation of the carrier." Col. 13, lines 57-59. The level adjust circuit scales the actual signal. The level adjust circuit does not generate an adjustment value for the received signal quality value.

In addition, as previously argued in Applicants' response filed on November 1, 2007, Yavuz does not cure this deficiency. See, page 20 of Reply to Action filed on November 1, 2007.

Claims 7-13 depend from claims 5 and 6 and also are submitted to be allowable for at least the same reasons set forth above with respect to claims 5 and 6.

Claim 17 is separately allowable for at least the following additional reasons.

The portion of Mahany relied upon by the Examiner discloses "a stored table containing typical oscillator frequency offsets as a function of temperature." Col. 25, lines 59-61. The stored table disclosed by Mahany is not a table indexed by available data rates and packet loss indicator values.

In addition, as previously argued in Applicants' response filed on November 1, 2007, Yavuz does not cure this deficiency. See, page 20 of Reply to Action filed on November 1, 2007.

The Examiner responded to Applicants' arguments stating that "Applicant's arguments filed 11/1/07 have been fully considered but they are not persuasive." The Examiner did not respond, however, to Applicants' arguments regarding claim 18. As amended, claim 18 recites selecting a fourth data rate value directly from the packet loss indicator value in response to the received signal quality value falling below a minimum signal quality value. As previously argued in Applicants' response filed on November 1, 2007, neither Mahany nor Yavuz disclose selecting a data rate value directly from the packet loss indicator value. See, page 20 of Reply to Action filed on November 1, 2007.

#### **Claim 19 and its dependent claims**

As amended, claim 19 is directed to an apparatus and includes a rate selector operative to select a third different data rate in response to the received signal quality value and the packet loss indicator value. For at least the same reasons set forth above with respect to claim 1, claim 19 is allowable over the combination of Mahany and Yavuz.

Claims 20-36 and 74 depend from claim 19 and are allowable for at least the same reasons set forth above with respect to claim 19.

Claim 22 is separately allowable for at least the following additional reasons. Claim 22 is directed toward an apparatus and includes a table including a plurality of available data rates. For at least the same reasons set forth above with respect to claim 17, claim 22 is allowable over the combination of Mahany and Yavuz.

Claim 23 is separately allowable for at least the following additional reasons. Claim 23 is directed toward an apparatus and includes a rate selector further operative to generate a confidence value for each of a plurality of available data rates using the received signal quality value and the packet loss indicator value. For at least the same reasons set forth above with respect to claim 5, claim 23 is allowable over the combination of Mahany and Yavuz.

Claim 24 is separately allowable for at least the following additional reasons. Claim 24 is directed toward an apparatus and includes a retry processor operative to generate an adjustment value for the received signal quality value from the packet loss indicator value. For at least the same reasons set forth above with respect to claim 6, claim 24 is allowable over the combination of Mahany and Yavuz.

Claims 25-31 depend from claims 23 and 24 and also are submitted to be allowable for at least the same reasons set forth above with respect to claim 23 and 24.

Claim 35 is separately allowable for at least the following additional reasons. Claim 35 is directed toward an apparatus and includes a table indexed by available data rates and packet loss indicator values. For at least the same reasons set forth above with respect to claim 17, claim 35 is allowable over the combination of Mahany and Yavuz.

Claim 36 is separately allowable for at least the following additional reasons. As amended, claim 36 is directed toward an apparatus and includes a rate selector further operative to select a fourth data rate value directly from the packet loss indicator value in response to the received signal quality value falling below a minimum signal level. For at least the same reasons set forth above with respect to claim 18, claim 36 is allowable over the combination of Mahany and Yavuz.

### **Claim 37 and its dependent claims**

As amended, claim 37 is directed to an apparatus and includes means for selecting a third different data rate in response to the received signal quality value and the packet loss indicator value. For at least the same reasons set forth above with respect to claim 1, claim 37 is allowable over the combination of Mahany and Yavuz.

Claims 38-54 and 75 depend from claim 37 and are allowable for at least the same reasons set forth above with respect to claim 37.

Claim 40 is separately allowable for at least the following additional reasons. Claim 40 is directed toward an apparatus and includes a table including a plurality of available data rates. For at least the same reasons set forth above with respect to claim 17, claim 40 is allowable over the combination of Mahany and Yavuz.

Claim 41 is separately allowable for at least the following additional reasons. Claim 41 is directed toward an apparatus and includes means for generating a confidence value for each of a plurality of available data rates using the received signal quality value and the packet loss indicator value. For at least the same reasons set forth above with respect to claim 5, claim 41 is allowable over the combination of Mahany and Yavuz.

Claim 42 is separately allowable for at least the following additional reasons. Claim 42 is directed toward an apparatus and includes means for generating an adjustment value for the received signal quality value from the packet loss indicator value. For at least the same reasons set forth above with respect to claim 6, claim 42 is allowable over the combination of Mahany and Yavuz.

Claims 43-49 depend from claims 41 and 42 and also are submitted to be allowable for at least the same reasons set forth above with respect to claims 41 and 42.

Claim 53 is separately allowable for at least the following additional reasons. Claim 53 is directed toward an apparatus and includes a table indexed by available data rates and packet loss indicator values. For at least the same reasons set forth above with respect to claim 17, claim 53 is allowable over the combination of Mahany and Yavuz.

Claim 54 is separately allowable for at least the following additional reasons. As amended, claim 54 is directed toward an apparatus and includes selecting a fourth data rate value directly from the packet loss indicator value in response to the received signal quality value falling below a minimum signal level. For at least the same reasons set forth above with respect to claim 18, claim 54 is allowable over the combination of Mahany and Yavuz.

#### **Claim 55 and its dependent claims**

As amended, claim 55 is directed to a computer-readable medium and includes selecting a third different data rate in response to the received signal quality value and the packet loss

indicator value. For at least the same reasons set forth above with respect to claim 1, claim 55 is allowable over the combination of Mahany and Yavuz.

Claims 56-72 and 76 depend from claim 55 and are allowable for at least the same reasons set forth above with respect to claim 55.

Claim 58 is separately allowable for at least the following additional reasons. As amended, claim 58 is directed toward a computer-readable medium and includes selecting the third different data rate from a plurality of data rates. For at least the same reasons set forth above with respect to claim 4, claim 58 is allowable over the combination of Mahany and Yavuz.

Claim 59 is separately allowable for at least the following additional reasons. Claim 59 is directed toward a computer-readable medium and includes generating a confidence value for each of a plurality of available data rates using the received signal quality value and the packet loss indicator value. For at least the same reasons set forth above with respect to claim 5, claim 59 is allowable over the combination of Mahany and Yavuz.

Claim 60 is separately allowable for at least the following additional reasons. Claim 60 is directed toward a computer-readable medium and includes generating an adjustment value for the received signal quality value from the packet loss indicator value. For at least the same reasons set forth above with respect to claim 6, claim 60 is allowable over the combination of Mahany and Yavuz.

Claims 61-67 depend from claims 59 and 60 and also are submitted to be allowable for at least the same reasons set forth above with respect to claims 59 and 60.

Claim 71 is separately allowable for at least the following additional reasons. Claim 71 is directed toward a computer-readable medium and includes a table indexed by available data rates and packet loss indicator values. For at least the same reasons set forth above with respect to claim 17, claim 71 is allowable over the combination of Mahany and Yavuz.

Claim 72 is separately allowable for at least the following additional reasons. As amended, claim 72 is directed toward a computer-readable medium and includes selecting a fourth data rate value directly from the packet loss indicator value in response to the received signal quality value falling below a minimum signal level. For at least the same reasons set forth above with respect to claim 18, claim 72 is allowable over the combination of Mahany and Yavuz.

By responding in the foregoing remarks only to particular positions taken by the Examiner, Applicants do not acquiesce with other positions that have not been explicitly addressed. In addition, Applicants' arguments for the patentability of a claim should not be understood as implying that no other reasons for the patentability of that claim exist.

Applicants respectfully request that all pending claims be allowed. Please apply any charges or credits to deposit account 06-1050.

Respectfully submitted,

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